

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ORACLE CORPORATION, a)
Delaware corporation,)
ORACLE USA, INC., a)
Colorado corporation, and)
ORACLE INTERNATIONAL)
CORPORATION, a California)
corporation,)
Plaintiffs,)
vs.) No. 07-CV-1658 (PJH)
SAP AG, a German)
corporation, SAP AMERICA,)
INC., a Delaware)
corporation, TOMORROWNOW,)
INC., a Texas corporation,)
and DOES 1-50, inclusive,)
Defendants.)

VIDEOTAPED DEPOSITION OF
BRUCE SPENCER, PH.D.

FRIDAY, JUNE 4, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR
(1-427339)

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10:07:54	2 THE WITNESS: Well, if we had estimates of	10:10:38	
10:07:56	3 measurement error, it would be quantifiable.	10:10:42	
10:07:58	4 MR. PICKETT: Q. But you don't?	10:10:57	
10:08:00	5 A. Not at this time, I don't.	10:11:00	
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10:08:20	14 Q. Have you concluded that any measurement	10:11:35	
10:08:23	15 errors in fact occur?	10:11:38	
10:08:25	16 MR. WILKES: Objection. Form.	10:11:42	
10:08:29	17 THE WITNESS: I've concluded that	10:11:44	
10:08:30	18 measurement errors have the potential to have	10:11:48	
10:08:33	19 occurred.	10:11:53	
10:08:34	20 MR. PICKETT: Q. So the answer to my	10:11:55	
10:08:35	21 question is, no, Mr. Pickett, I have not concluded	10:11:58	
10:08:38	22 that any specific measurement errors in fact occur.	10:11:59	
10:08:41	23 Right?	10:12:00	
10:08:41	24 MR. WILKES: Objection. Form.	10:12:03	
10:08:42	25 Argumentative, harassing, asked and answered.	10:12:06	
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10:08:54	1 THE WITNESS: I don't have an opinion	10:12:12	
10:08:58	2 about the magnitude of measurement error.	10:12:14	
10:09:01	3 MR. PICKETT: Q. Or even the existence of	10:12:16	
10:09:02	4 a single one. Correct?	10:12:23	
10:09:04	5 MR. WILKES: Objection. Form.	10:12:26	
10:09:14	6 THE WITNESS: I don't have evidence of a	10:12:27	
10:09:16	7 measurement error that has occurred.	10:12:30	
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11:28:03	6 Q. Well, it could or it could not. You don't	11:30:09	
11:28:06	7 know one way or the other.	11:30:12	
11:28:08	8 A. I don't know what the links are between	11:30:12	
11:28:12	9 Dr. Levy's statistics and any damages claims.	11:30:14	
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11:28:55	22 A. What I know about this case is, I was	11:30:47	
11:28:57	23 asked to review and evaluate Dr. Levy's report and	11:30:51	
11:29:02	24 his work, and that's what I know about. And I'm	11:30:53	
11:29:08	25 pretty myopic about the rest of the case. So --	11:30:56	
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11:29:21	6 MR. PICKETT: Q. Do you understand that	11:31:09	
11:29:22	7 there is a burden of proof in the trial?	11:31:12	
11:29:27	8 MR. WILKES: Objection. Form.	11:31:14	
11:29:29	9 THE WITNESS: I would expect that there	11:31:16	
11:29:30	10 is, yes.	11:31:18	
11:29:31	11 MR. PICKETT: Q. Do you know what that	11:31:20	
11:29:32	12 burden of proof is?	11:31:20	
11:29:34	13 MR. WILKES: Objection. Form.	11:31:22	
11:29:35	14 THE WITNESS: Not exactly.	11:31:24	
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12:53:45	3 A. No, I don't.	12:56:26	
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16:55:32	16:59:57 2 THE WITNESS: My inclination is borne of
16:55:56	17:00:00 3 my experience as a practicing statistician.
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16:59:06	17:01:51
16:59:09	17:01:53
16:59:11	17:02:00
16:59:18	17:02:02 14 MR. PICKETT: Q. Based on what you know,
16:59:19	17:02:04 15 are you able to say whether or not his precision
16:59:23	17:02:08 16 ranges are precise enough?
16:59:25	17:02:11 17 MR. WILKES: Same objection.
16:59:29	17:02:12 18 MR. PICKETT: Q. For the purposes of this
16:59:30	17:02:13 19 case?
16:59:34	17:02:13 20 MR. WILKES: Same objections.
16:59:37	17:02:18 21 THE WITNESS: Without knowing the purposes
16:59:42	17:02:19 22 of the case or having seen how the numbers are
16:59:44 23 Q. So your inclination has no basis?	17:02:22 23 going to be used, I can't answer your question and
16:59:52 24 MR. WILKES: Objection. Form.	17:02:25 24 say I know, no. So the answer is, I don't know.
16:59:54 25 MR. PICKETT: Q. Right?	17:02:34 25 At this point.

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18 Q. Is it too low?

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17:57:32		17:59:39	
17:57:35		17:59:51	
17:57:35		17:59:53	
17:57:42		17:59:55	
17:57:46		17:59:56	
17:57:57		17:59:59	
17:57:59		18:00:00	
17:58:07		18:00:00	
17:58:09		18:00:01	
17:58:14		18:00:03	
17:58:18		18:00:06	
17:58:20		18:00:07	
17:58:21		18:00:09	
17:58:22		18:00:12	
17:58:23		18:00:17	
17:58:25		18:00:22	
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17:58:27		18:00:23	

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18:01:23 18:01:25 18:01:29 18:01:33 18:01:36 18:01:37 18:01:40 18:01:44 18:01:45 18:01:53 18:01:59 18:02:01 18:02:05 18:02:07 18:02:11 18:02:13 18:02:16 18:02:24 18:02:27 18:02:29 18:02:30 18:02:31 18:02:35 18:02:40 18:02:43	18:03:56 18:03:59 18:04:22 18:04:28 18:04:31 18:04:33 18:04:33 18:04:36 18:04:37 18:04:39 18:04:42 18:04:44 18:04:46 18:04:51 18:04:54 18:04:57 18:05:01 18:05:05 18:05:07 18:05:10 18:05:13 18:05:17 18:05:19 18:05:21 24 Q. Why did you ask to have fewer samples done 18:05:23 25 in the bootstrap?

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18:05:24	1 A. Because the computations were taking too	18:08:26	
18:05:27	2 long, and we wanted to get you the results before	18:08:28	
18:05:31	3 my deposition.	18:08:31	
18:05:33	4 Q. So you did it to reduce the time and	18:08:35	
18:05:36	5 effort that was put into the exercise?	18:08:38	
18:05:38	6 A. Yes. We were under a significant time	18:08:41	
18:05:41	7 constraint.	18:08:43	
18:05:42		18:08:44	
18:05:45		18:08:46	
18:05:48		18:08:47	
18:05:49		18:08:49	
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18:05:53		18:08:55	
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18:05:58		18:09:06	
18:06:00		18:09:07	
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18:06:10		18:09:15	
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18:07:10		18:10:03	
18:07:10		18:10:03	
18:07:14		18:10:04	
18:07:16		18:10:05	
18:07:21		18:10:09	
18:07:28		18:10:10	
18:07:31		18:10:12	
18:07:59		18:10:14	
18:08:08		18:10:15	
18:08:11		18:10:16	
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CERTIFICATE OF REPORTER

I, HOLLY THUMAN, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein state, and that the testimony of said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition review of the transcript ☒ was ☐ was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: June 8, 2010

Holly Thuman
HOLLY THUMAN, CSR